(35)

HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (L) No. 1174 of 2007

Smt. Suman Unni

Petitioner

Versus

Mar Gregorious Memorial Senior Secondary School and others.

Respondents

Post for order 23-4-2007

Sd/-
Satish K. Agnihotri
Judge

(136)

HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (L) No. 1174 of 2007

Petitioner		Smt. Suman Unni, aged about 40 years, W/o. Shri K. Unnikrishnan, R/o. Qr.No. 6/E, Street – 28, Sector-10, Bhilai, Dist. Durg, CG.
		Versus
Respondents	1)	Mar Gregorious Memorial, Senior Secondary School, Sector – 6, Bhilai, Durg, CG.
	2)	Central Board of Secondary Education, Preeti Vihar, Delhi.
	3)	Appellate Authority under CG Shops Establishments Act,. 1958 and Assistant Labour Commissioner, Durg, CG.

(Writ Petition under Article 226/227 of the Constitution of India)

SB: Hon'ble Shri Justice Satish K. Agnihotri

Present:
Shri Jitendra Pali, counsel for the petitioner,

ORDER
(Passed on 23rd April, 2007)

By this petition, the petitioner impugns the legality and validity of the order dated 28-4-2006 (Annexure P/4) and the order dated 30-12-2006 passed by the Appellate Authority under CG Shops & Establishments Act, 1958 (for short, "the Act, 1958") and the Assistant Labour Commissioner, Durg, whereunder services of the petitioner were terminated as no longer required and the same was approved by the Appellate Authority.

2. The facts, in nutshell, are that according to learned counsel appearing for the petitioner, the petitioner was appointed on the post of Tailoring Teacher in the year 1996 in Mar Gregorious Memorial Senior Secondary School i.e., respondent No.1-school. The petitioner has not supplied a copy of the appointment letter. Subsequently, vide order dated 4-8-1999 (Annexure P/1) services of the petitioner as Tailoring Teacher were regularized. The appointment of the petitioner was subject to certain terms and conditions. One of the conditions was that services are terminable by giving one month's notice or pay in lieu on either side without assigning any reason. Thereafter, according to learned counsel appearing for the petitioner, the petitioner was removed from service with effect from 30-4-2004 without issuing any show cause notice or charges against her. The petitioner made successful challenge before the Assistant Labour Commissioner and thereafter in the High Court.

3. The respondent No.1-School was accordingly directed to reinstate the petitioner with 25% back wages. The petitioner thereafter was reinstated in service vide order dated 1-12-2005 (Annexure P/2). After a period of about four months, the petitioner was again terminated vide order No.MGM/SSS/Estt/2006/177 dated 28-4-2006 (Annexure P/4) with one month's salary for the month of April 2006 and the salary for the month of May being summer vacation from 1-5-2006 to 18-6-2006.

4. The petitioner, being aggrieved, preferred an appeal before the Appellate Authority under the Act, 1958 and the Assistant Labour Commissioner, Durg in Appeal No. 45/2006. The Assistant Labour Commissioner, Durg, vide his order dated 30-12-2006 (Annexure P/7) dismissed the appeal holding that under the provisions of Section 58 (1)

of the Act, 1958, service of any employee can be terminated with one month's notice or one month's salary in lieu of notice. In view of that, since the petitioner has chosen to take recourse to provisions under the Act, 1958, the Appellate Authority came to the conclusion that termination order was just and proper as, as per the appointment order, the petitioner was paid one month's salary in lieu of notice.

5. Learned counsel appearing for the petitioner submits that the termination of the petitioner was violative of principle of natural justice and fair play in action. It is evident that the appointment of the petitioner to the post of Tailoring Teacher was subject to termination by giving one month's notice or pay in lieu on either side without assigning any reason. The employer of respondent No.2 has stated reasons in the order as under:

"**M.G.M. Senior Secondary School**
(ENGLISH MEDIUM)
(Affiliated to C.B.S.E., New Delhi)
Estd: 1965

Sector -6, Bhilai – 1,
Distt. Durg, CG.
PIN 490 006.

Ref:/No. MGM/sss/Estt/2006/177 Date: 28. 4. 06

Smt. Suman Unni,
W/o. Shri Unnikrishnan,
Tailoring Teacher,
MGM Sr. Secondary School,
Sector -6,
Bhilai, Durg, CG.

SUB:- **Termination of Services.**

Dear Smt. Unni,

You were appointed as Tailoring Teacher in MGM Sr. Secondary School, Bhilai.

You are aware that for the last 3-4 years no students are opting for tailoring as a subject for which you had been appointed.

Your services are therefore no longer required and is here by terminated as per Rule 29(2) of the bye-laws framed by the CBSE, forthwith.

A cheque bearing no.592386 dated 28/04/06 for 3 months salary amounting to Rs.12,816/- (Rupees twelve thousand eight hundred sixteen only) in lieu of notice period is enclosed herewith. So also cheque bearing no. 592387 dated 28/04/2006 for salary for the month of April 2006 including the salary for summer vacation from 01-05-06 to 18-06-06 in all amounting to Rs.9,774/- (Rupees Nine thousand seven hundred seventy four only) is also enclosed herewith.

Benefits on this account as per the practice followed by the school, amounting to Rs.15,034/- (Rupees Fifteen thousand thirty four only) is also enclosed with vide cheque bearing no.592388 dated 28/4/06.

With best wishes,

For, M.G.M. Sr. Secondary School,

(K.C. George)
Hon. Correspondent"

6. The petitioner was accordingly paid for one month's salary in lieu of notice. The respondent No1/School, it appears, is not Government aided or a Government School. It is governed under the provisions of the Act, 1958.

7. Section 58 (1) of the CG Shops and Establishments Act, 1958 reads as under:

> "**58.- Notice of dismissal** (1) No employer shall dispense with the service of an employee who has been employed for a period of three months or more except for a reasonable cause, and without giving such employee at least one month's notice or wages in lieu of such notice.
>
> Provided that such notice shall not be necessary if the services of such employees are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held by the employer for the purpose."

8. Learned counsel appearing for the petitioner challenges the order on the ground that Clause 29 (2) of Central Board of Secondary Education (for short, "CBSE") Bye-laws was not followed. Section 29(2) of CBSE Bye-laws reads as under:

> "**29 Termination of Service due to Abolition of Posts etc.** (2)- The Managing Committee shall also be competent to terminate the services of a confirmed employee only in case of abolition of a post due to closing down of school a class or reduction in the number of sections of a class or discontinuance of a teaching subject by giving three months notice in writing or three months salary including all allowances."

9. On perusal of the above stated provisions of law under the Act, 1958 and under CBSE Bye-laws, it is clear that service of an employee who has been employed for a period of three months or more shall be dispensed with, with one month's notice or wages in lieu of such notice except in case of mis-conduct whereunder notice shall be necessary to prove the charge of mis-conduct supported by satisfactory evidence recorded at an enquiry held by the employer for the purpose.

10. Clause 29 (2) of CBSE Bye-laws further makes it clear that employer is competent to terminate the services of a confirmed employee only in case of abolition of a post due to closing down of school a class or reduction in the number of sections of a class or discontinuance of a teaching subject by giving three months notice in writing or three months salary including all allowances.

11. Reading both the provisions together and applying to the facts of the case, it is clear that the impugned termination order is just and proper. The services of the petitioner were dispensed with on account of no longer requirement of Tailoring Teacher as there were no students in that particular department and one month's notice as required under the provisions of the Act, 1958 was given along with termination order.

12. I have heard learned counsel for the petitioner, perused the pleadings, documents and the impugned judgment appended thereto. I do not find any infirmity, illegality or jurisdictional error in the impugned judgment/order passed by the Appellate Authority.

13. It is well settled principle of law that under Article 226/227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

14. Applying the above settled principles of law to the facts of the present case, it does not warrant an interference with the decision passed by the Authorities below.

15. Thus, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju